

## **REMARKS/ARGUMENTS**

Applicant respectfully requests reconsideration of this application, as amended, and reconsideration of the Office Action dated August 4, 2006.

### **I. General Remarks Regarding the Content of this Amendment**

Upon entry of this Amendment, claims 7-23 and 30-37 will remain pending in this application. Through this Amendment, Applicant has amended independent claims 7, 16, and 30 to recite that the mesh or braided portion of the closure system extends “over a top instep portion” of the foot-housing member or the upper member. The specification also has been amended in a similar manner. Support for these changes may be found, for example, in original Figures 1-3 and 7, which illustrate the mesh or braided panel 122 extending over and across the top instep portion of the wearer’s foot and the illustrated footwear product.

Applicant makes the above noted claim changes for purposes of expediting prosecution and to facilitate the early allowance of this application. This action should not be construed as an admission or acknowledgement that Applicant agrees with any grounds of rejection raised by the Office in the August 4, 2006, Office Action. Applicant reserves all rights with respect to the original and/or previously submitted claims, including the right to present claims of the same or similar scope in the future (*e.g.*, in a continuing application).

For the reasons described above, Applicant submits that no new matter is included in this Amendment. Also, no claim fees are believed to be due in presenting this Amendment.

### **II. Applicant’s Claims Patentably Distinguish from the Cited Art**

#### **A. Claims 7, 8, 10, 11, 13-17, 19, 21-23, 30, 31, 33, 34, 36, and 37 Patentably Distinguish from Allen**

In the August 4, 2006, Office Action, the Office rejected claims 7, 8, 10, 11, 13-17, 19, 21-23, 30, 31, 33, 34, 36, and 37 under 35 U.S.C. § 102(b) as allegedly anticipated by Allen, et al., U.S. Patent No. 5,497,564 (hereinafter “Allen”). *See* the August 4, 2006, Office Action at page 2. Applicant respectfully traverses this rejection and requests reconsideration.

For anticipation to exist, each and every element of the claimed invention must be shown in a single prior art reference. *See The Manual of Patent Examining Procedure (“M.P.E.P.”) § 2131, and the cases cited therein.* Moreover, for anticipation to exist, this single prior art reference must show the claimed elements arranged in the same manner as recited in the claim. *Id.* As will be demonstrated below, the Allen patent fails to anticipate Applicant’s claimed invention.

Applicant’s independent claims 7, 16, and 30 recite that the mesh or braided panel of the foot-receiving device (claims 7 and 30) or article of footwear (claim 16) closure system at least partially extends around the foot-housing member (claims 7 and 30) or upper member (claim 16), “over a top instep portion” of the foot-housing member or upper member.

In the Office Action, the Office points to Fig. 6 and element 98 in Allen as illustrating a closure system including a mesh material. *See* the August 4, 2006, Office Action at page 2. Fig. 6 of Allen is reproduced below.

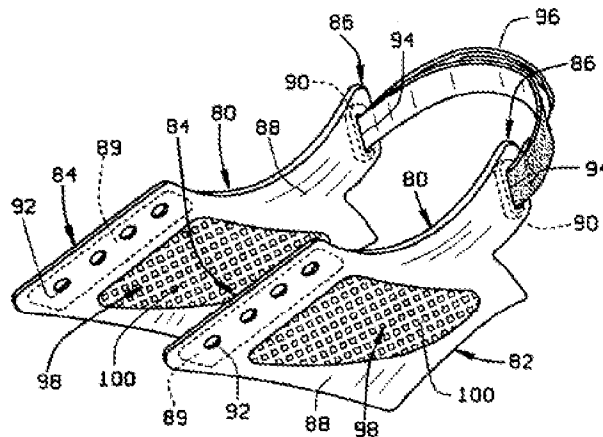


FIG. 6

Notably, Fig. 6 of Allen, and as even more clearly shown in Figs. 3 and 5 of Allen, does not illustrate, and the patent does not describe, a closure system in which a mesh or braided panel extends “over a top instep portion” of a foot-housing member or an upper member, as recited in Applicant’s independent claims 1, 16, and 30.

The example structure illustrated in Fig. 7 of Allen does not overcome the deficiencies of the structure illustrated in Allen's Fig. 6. Nothing in the description of Allen's Fig. 7 indicates that the closure system of that structure includes a mesh or braided panel that extends over the top instep portion of the article of footwear. Indeed, the description of Allen's Fig. 7 makes no mention of use of a mesh material in a footwear structure. *See* Allen at column 7, lines 18-46.

Applicant's claims 15, 23, and 37 further patentably distinguish from Allen. These claims recite that the mesh or braided panel-including closure system at least partially covers a secondary closure system, such as a shoelace based closure system. Nothing in Allen teaches or suggests this feature of Applicant's claimed invention. Rather, as illustrated in Figs. 3, 5, and 6 of Allen, the mesh materials 76 and 100 form part of the shoelace system – these materials 76 and 100 do not overlay the shoelace system.

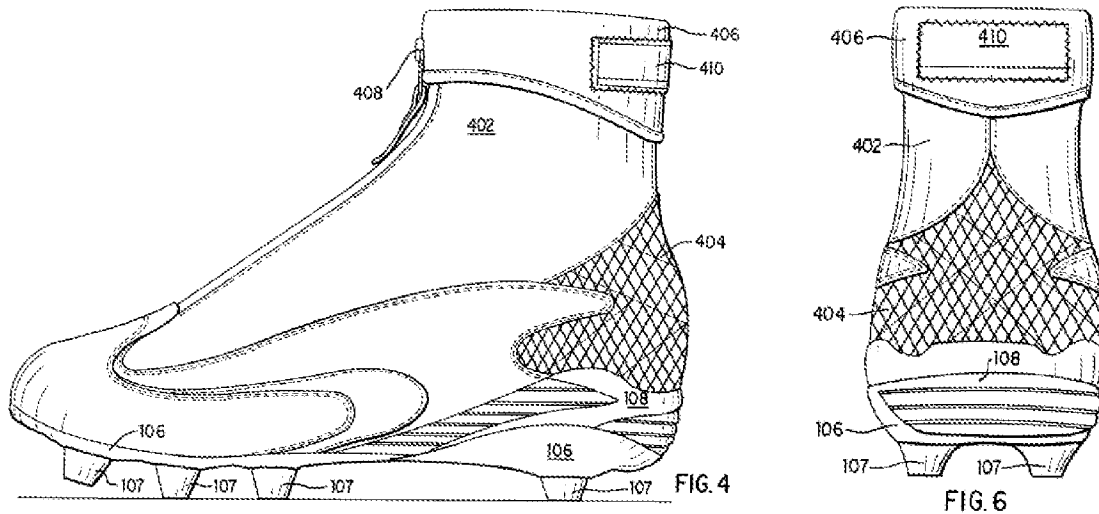
For these reasons, Applicant respectfully submits that the present claims patentably distinguish from Allen. Withdrawal of the rejections and allowance of these claims are earnestly solicited.

**B. Claims 7, 8, 10, 13-17, 21-23, 30, 31, 36, and 37 Patentably Distinguish from Monti**

In the August 4, 2006, Office Action, the Office rejected claims 7, 8, 10, 13-17, 21-23, 30, 31, 36, and 37 under 35 U.S.C. § 102(b) as allegedly anticipated by Monti, et al., U.S. Patent No. 5,992,057 (hereinafter "Monti"). *See* the August 4, 2006, Office Action at pages 2-3. Applicant respectfully traverses this rejection and requests reconsideration.

As described above, Applicant's independent claims 7, 16, and 30 recite that the mesh or braided panel of the foot-receiving device (claims 7 and 30) or article of footwear (claim 16) closure system at least partially extends around the foot-housing member (claims 7 and 30) or upper member (claim 16), "over a top instep portion" of the foot-housing member or upper member, wherein the mesh or braided panel conforms to foot shape or position changes.

In the Office Action, the Office points to mesh material 404 in Figs. 4 and 6 of Monti. *See* the August 4, 2006, Office Action at page 3. Figs. 4 and 6 of Monti are reproduced below.



Notably, these figures of Monti illustrate that the mesh panel 404 is located at a rear heel portion of the article of footwear. Monti does not describe or illustrate a closure system in which a mesh or braided panel extends over a top instep portion of a foot-housing member or an upper member and conforms to foot shape or position changes, as recited in Applicant's independent claims 1, 16, and 30.

For these reasons, Applicant respectfully submits that the present claims patentably distinguish from Allen. Withdrawal of the rejections and allowance of these claims are earnestly solicited.

**C. Claims 9, 12, 18, 20, 32, and 35 Patentably Distinguish from the Combination of Allen and Towns**

In the August 4, 2006, Office Action, the Office rejected claims 9, 12, 18, 20, 32, and 35 under 35 U.S.C. § 103(a) as allegedly rendered *prima facie* obvious from the combination of Allen in view of Towns, et al., U.S. Patent No. 6,532,687 (hereinafter "Towns"). See the August 4, 2006, Office Action at page 3. Applicant respectfully traverses this rejection and requests reconsideration.

Claims 9, 12, 18, 20, 32, and 35 depend, directly or indirectly, from one of independent claims 7, 16, and 30, discussed above. Towns does not overcome the deficiencies of Allen with respect to the various independent claims described above, nor is Towns relied upon by the Office for this purpose. Accordingly, Applicant respectfully submits that these claims patentably

distinguish from the combination of Allen and Towns. Withdrawal of the rejections and allowance of these claims are earnestly solicited.

### **III. Conclusion**

If the Examiner believes that a telephone conference or a personal interview will be useful to advance the prosecution of this application and/or to place the application in condition for allowance, he is invited to contact the undersigned attorney.

Applicant believes that no fees are due for entry and consideration of this Amendment. If, however, the Office determines that any fees are required, such as fees under 37 C.F.R. §§ 1.16 and/or 1.17, or if an extension of time is necessary that is not accounted for in the documents filed with this Amendment, the Commissioner is authorized to debit our Deposit Account No. 19-0733 for any necessary fees, including any necessary extension fees or other fees needed to maintain the pending status of this patent application.

All rejections having been addressed, Applicant respectfully submits that this application is in condition for immediate allowance. Allowance of this application is earnestly solicited.

Respectfully submitted,

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